

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

RAFAEL M. PANTOJA,

Plaintiff,

v.

BANCO POPULAR and AMERICAN SECURITY  
INSURANCE COMPANY,

Defendants.

Case No. 11 civ. 3636 (VLB)

**DECLARATION OF MICHAEL P. DE SIMONE**

Michael P. De Simone, under penalty pursuant to 28 U.S.C. 1746, deposes and says:

1. I am an attorney duly admitted to practice in this Court, and an employee of law firm Alston & Bird LLP, which is counsel to Defendant Banco Popular (“Banco”). I am fully familiar with the facts of this case and the proceedings herein.

2. I submit this Declaration in opposition to Plaintiff Pantoja’s motion to amend the complaint. Pantoja’s proposed Second Amended Complaint fails to state a claim upon which relief could be granted and it would be futile to permit the amendment.

3. On or about October 11, 2011, Banco moved to dismiss all claims. I submitted a declaration in support of Banco’s motion to dismiss, which outlined the relevant facts and attached key documents (the “Dismissal Dec.”). A true and correct copy of the Dismissal Dec., with exhibits, is attached hereto as Exhibit 1. I refer the Court to the Dismissal Dec. for the factual background.

4. Banco also submitted a memorandum of law in support of its motion to dismiss. A true and correct copy of the memorandum of law is attached hereto as Exhibit 2.

5. As further explained in the Dismissal Dec., Pantoja filed this action while he was also pursuing an action in New York Supreme Court, Westchester County, captioned *Rafael M. Pantoja and Rachel M. Thull v. JPMorgan Chase Bank, PHH Mortgage Corp., Marc J. Hinkle, Cyprexx and Richard Grieco* (the “State Court Action”). Defendants JP Morgan Chase Bank (“Chase”), PHH Mortgage Corp. (“PHH”) and Marc J. Hinkle (“Hinkle”) – who are among the new defendants in the proposed Second Amended Complaint – moved for summary judgment dismissing all claims in the State Court Action. On December 8, 2011, Hon. Sam D. Walker granted the motion for summary judgment and dismissed all claims. A true and correct copy of Hon. Walker’s Decision & Order is attached hereto as Exhibit 3. Pantoja did not file a notice of appeal from that Decision & Order and it now is final.

6. Pantoja now seeks to circumvent Judge Walker’s Decision and Order by asserting in this action claims against Chase, PHH and Hinkle that are barred by Judge Walker’s Decision and Order, as well as by the judgments addressed in the Dismissal Dec.

Dated: New York, New York  
May, 15, 2012



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Michael P. De Simone